

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**In the Matter of the Complaint of**

**RUSSELL D. TOWNER,**

Plaintiff,

-against-

**COUNTY OF TIOGA, KIRK O. MARTIN,  
ERIC H. GARTENMAN, CHERYL A.  
MANCINI, GARY HOWARD, PATRICK  
HOGAN, WAYNE MOULTON, and C.J.  
ALEXANDER,**

Defendants.

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The defendants, County of Tioga, Kirk O. Martin, Eric H. Gartenman, Cheryl A. Mancini, Gary Howard, Patrick Hogan, Wayne Moulton, and C.J. Alexander (collectively, the “Defendants”), by and through their attorneys, The Law Firm of Frank W. Miller, allege the following responses and affirmative defenses as its answer to the plaintiff’s complaint (Dkt. #2):

1. The Defendants deny each and every allegation contained in paragraphs “1,” “17,” “19,” and “28,” “35,” “36,” “37,” “38,” and “39,” and to the extent that those allegations are repeated or realleged elsewhere in the complaint, the Defendants repeat that response.

2. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs “2,” “11,” and “23,” and to the extent that

**Answer**

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(GLS / DEP)

those allegations are repeated or realleged elsewhere in the complaint, the Defendants repeat that response.

3. The Defendants admit the allegations contained in paragraphs “3,” “4,” “25,” and “27.”

4. Regarding the allegations in paragraph “5,” the Defendants admit that defendant Gartenman appears before the Owego Town Court as an attorney pursuant to his job with the District Attorney’s Office, but denies that he is otherwise affiliated with that Court in any way. The Defendants also deny the allegation that defendant Gartenman is an “agent, servant, and employee of . . . defendant DA MARTIN.” The Defendants admit the remainder of the allegations in that paragraph.

5. Regarding the allegations in paragraph “6,” the Defendants admit that defendant Mancini appears before the Owego Village Court as an attorney pursuant to her job with the District Attorney’s Office, but denies that she is otherwise affiliated with that Court in any way. The Defendants also deny the allegation that defendant Mancini is an “agent, servant, and employee of . . . defendant DA MARTIN.” The Defendants admit the remainder of the allegations in that paragraph.

6. Regarding the allegations in paragraph “7,” the Defendants deny that defendant Howard was “responsible by law for enforcing the regulations of the Tioga County Sheriff’s Office and for ensuring that the Sheriff’s Office personnel obey the laws of the State of New

York and of the United States.” The Defendants also deny the allegation that defendant Howard was “responsible for all the staff under his command and he was responsible for their ongoing training, supervision, and conduct.” The Defendants admit the remainder of the allegations in that paragraph.

7. Regarding the allegations in paragraph “8,” the Defendants deny the allegations that defendant Hogan was the “commanding officer of investigators assigned to the CID and was responsible for their ongoing training, supervision and conduct.” The Defendants deny the allegation that defendant Hogan was “responsible by law for enforcing the regulations of the Tioga County Sheriff’s Office and for ensuring that the Sheriff’s Office personnel obey the laws of the State of New York and of the United States.” The Defendants also deny the allegation that defendant Hogan was “acting in such capacity as the agent, servant, and employee of . . . defendant SHERIFF HOWARD.” The Defendants admit the remainder of the allegations in that paragraph.

8. Regarding the allegations in paragraph “9,” the Defendants deny the allegation that defendant Moulton was “acting in such capacity as the agent, servant, and employee of . . . defendant SHERIFF HOWARD and under the command and supervision of the defendant SENIOR INV. HOGAN.” The Defendants admit the remainder of the allegations in that paragraph.

9. Regarding the allegations in paragraph “10,” the Defendants deny the allegation that defendant Alexander was “acting in such capacity as the agent, servant, and employee of . . .

defendant SHERIFF HOWARD and under the command and supervision of the defendant SENIOR INV. HOGAN.” The Defendants admit the remainder of the allegations in that paragraph.

10. Regarding paragraph “12,” the Defendants deny the allegation that “[i]nitially no one took this to be a serious threat” to the extent it may be alleged as the response of any County employees. However, to the extent that phrase is alleged as the response of other inmates or other non-County individuals, the Defendants lack knowledge or information sufficient to form a belief as to the truth of that allegation. The Defendants lack knowledge or information sufficient to form a belief as to the truth of all other remaining allegations in that paragraph.

11. Regarding paragraph “13,” the Defendants admit that the District Attorney’s Office received two letters describing threats against defendant Mancini, one purportedly from the plaintiff and one purportedly from Stephen Webster. The Defendants lack knowledge or information sufficient to form a belief as to the truth of all other allegations in that paragraph.

12. Regarding paragraph “14,” the Defendants admit that attorney Allen Stone came to visit the plaintiff in the Tioga County Jail on or about April 10, 2014. The Defendants lack knowledge or information sufficient to form a belief as to the truth of all other allegations in that paragraph.

13. Regarding paragraph “15,” the Defendants admit the allegation that the plaintiff was led from the Tioga County Jail to an interview room for a meeting with defendants Hogan

and Moulton, in the presence of the plaintiff's attorney, Allen Stone. The Defendants deny all other allegations in that paragraph.

14. Regarding paragraph "16," the Defendants admit that the plaintiff prepared written correspondence to the Tioga County Sheriff's Office, but deny that the correspondence, or any of the activities described in the correspondence, or any of the other allegations described in that paragraph, were "things that Defendants SENIOR INV. HOGAN and INV. MOULTON requested." The Defendants further deny all other remaining allegations in that paragraph.

15. Regarding the allegations in paragraph "18," the Defendants admit that MRS. NUGENT posted bail for the plaintiff. The Defendants admit the allegations pertaining to the conversation with defendant Alexander, except that the Defendants deny the allegation that defendant Alexander's tone was "unfriendly." The Defendants admit that the plaintiff had a conversation with defendant Moulton, but deny all allegations in that paragraph pertaining to the conversation with defendant Moulton and deny the allegation that "defendants refused to communicate further with the Plaintiff and did not let him call ATTORNEY STONE." The Defendants deny all other remaining allegations in that paragraph.

16. Regarding the allegations in paragraph "20," the Defendants admit that Mr. Towner was arrested and charged with Conspiracy in the Second Degree, but deny the allegation that his arrest was false. The Defendants deny all other remaining allegations in that paragraph.

17. Regarding the allegations in paragraph “21,” the Defendants admit that the plaintiff was transported to the Broome County Jail, but lack knowledge or information sufficient to form a belief as to the truth of all other allegations in that paragraph regarding the conditions of his confinement there or the duration of those conditions of confinement.

18. Regarding the allegations in paragraph “22,” the Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to the conversation between the plaintiff and attorney Allen Stone. The Defendants deny all other allegations in that paragraph pertaining to statements or conduct by defendant Martin. The Defendants admit that the charges against the plaintiff were not presented to a grand jury.

19. Regarding the allegations in paragraph “24,” the Defendants allege that a motion was filed to reduce the charge from Conspiracy in the Second Degree to Conspiracy in the Fifth Degree. The Defendants deny all other allegations in that paragraph.

20. Regarding the allegations in paragraph “26,” the Defendants admit that the plaintiff served a notice of claim, but deny the allegation that the notice of claim was “timely.”

**AS THEIR ANSWER TO THE FIRST CAUSE OF ACTION,**  
**THE DEFENDANTS ALLEGE:**

21. The Defendants deny each and every allegation contained in paragraphs “29,” “30,” “31,” “32,” “33,” and “34,” and to the extent that those allegations are repeated or realleged elsewhere in the complaint, the Defendants repeat that response.

**AS THEIR FIRST COMPLETE OR PARTIAL AFFIRMATIVE DEFENSE,  
THE DEFENDANTS ALLEGE:**

22. One or more of the claims in the plaintiff's complaint fails to state a cause of action upon which relief may be granted and is dismissible for failing to plead the necessary factual allegations to sustain the cause of action.

**AS THEIR SECOND COMPLETE OR PARTIAL AFFIRMATIVE DEFENSE,  
THE DEFENDANTS ALLEGE:**

23. Some or all of the plaintiff's state law claims are dismissible for failure to serve a timely and proper notice of claim upon the Defendants.

**AS THEIR THIRD COMPLETE OR PARTIAL AFFIRMATIVE DEFENSE,  
THE DEFENDANTS ALLEGE:**

24. Some or all of the plaintiff's claims for monetary and compensatory damages are barred because those damages were caused, in whole or in part, by the culpable conduct, fault, or want of care on the part of the plaintiff and not through any fault or improper conduct on the part of the Defendants.

**AS THEIR FOURTH COMPLETE OR PARTIAL AFFIRMATIVE DEFENSE,  
THE DEFENDANTS ALLEGE:**

25. One or more of the claims in the plaintiff's complaint are barred by the doctrines of qualified immunity and good faith immunity.

**AS THEIR FIFTH COMPLETE OR PARTIAL AFFIRMATIVE DEFENSE,  
THE DEFENDANTS ALLEGE:**

26. One or more of the claims in the plaintiff's complaint is barred by the existence of probable cause to believe that the plaintiff committed a punishable offense.

Dated: August 16, 2015  
East Syracuse, New York

Respectfully submitted,

**THE LAW FIRM OF FRANK W. MILLER**

**/s/ Bryan Georgiady  
Bar Roll No. 516186**

*Attorneys for All Defendants*

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**TO:**

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*Via U.S. Mail*